
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-03-PA-003
Dominic DeNaples)	
WNKK817)	NAL/Acct. No. 200332400009
Dunmore, Pennsylvania)	
)	FRN: 0008-27-4771
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 27, 2003

By the District Director, Philadelphia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Dominic DeNaples has apparently violated Sections 1.903(a) of the Commission's Rules (the "Rules")¹ by transmitting on an unauthorized frequency. This section requires that a licensee operate its station in compliance with the terms of the station authorization. We conclude that Dominic DeNaples is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On March 19, 2002, a licensee, filed a complaint with the Enforcement Bureau's Philadelphia Office alleging that an unidentified auto parts dealer was causing harmful co-channel interference to his radio communications on the frequency 154.515 MHz. While investigating the complaint on January 14, 2003, an FCC Agent with the Philadelphia Office monitored radio communications on the frequency 154.515 MHz from persons who were apparently involved in the distribution of auto parts.

3. On January 14, 2003 between 2:30 p.m. and 3:15 p.m., the agent used direction-finding techniques to positively determine that the source of the radio transmissions on the frequency 154.515 MHz was located at DeNaples Auto Parts, 400 Mill Street, Dunmore, Pennsylvania 18512. During an inspection of the company's radio communications equipment, the agent determined that DeNaples Auto Parts operated a base station and mobile radios on the frequency 154.515 MHz.

4. Mr. Dominic DeNaples, the owner of the DeNaples Auto Parts, acknowledged that he is the owner of the radio communications equipment and responsible for its operation. He provided the FCC agent with a copy of the license for station WNKK817 as evidence that he was authorized to operate the radio communication equipment. However, the license for station WNKK817 only authorized Mr. DeNaples to operate radio communications equipment on the frequencies 452.1750 MHz and 457.1750

¹ 47 C.F.R. § 1.903(a).

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MHz at 400 Mill Street, Dunmore, Pennsylvania. The Commission has no record that the Dominic DeNaples was authorized to operate any radio communications equipment on the frequency 154.515 MHz.

III. DISCUSSION

5. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Service must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part. On January 14, 2003, Dominic DeNaples operated radio communications equipment on the unauthorized frequency 154.515 MHz, in violation of Section 1.903(a) of the Rules.

6. Based on the evidence before us, we find that Dominic DeNaples willfully² violated Sections 1.903(a) of the Rules. The *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporated the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),³ sets the base forfeiture for operating on an unauthorized frequency at four thousand dollars (\$4,000). In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,⁴ (the "Act"), as amended, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a four thousand dollar (\$4,000) forfeiture is warranted.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁵, and Sections 0.111, 0.311 and 1.80 of the Rules⁶, Dominic DeNaples is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for operating radio communications equipment on an unauthorized frequency, in violation of Section 1.903(a) of the Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Dominic DeNaples SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ 47 C.F.R. § 1.80.

⁴ 47 U.S.C § 503(b)(2)(D).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, and 0.311.

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9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) 0008-27-4771, and should note the NAL/Acct. No. 200332400009.

10. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332400009 and FRN: 0008-27-4771.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Dominic DeNaples, 400 Mill Street, Dunmore, Pennsylvania 18512.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes
District Director
Philadelphia Office

Attachment A: Condensed List of Small Entities

⁷ See 47 C.F.R. § 1.1914.